SUPREME COURT, U. S.

No. 352

In the Supreme Court of the United States

October Term, 1939

JOHN W. CONNELLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

[illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 352

JOHN W. CONNELLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner is a co-defendant of Gennaro J. Coppola, whose petition for a writ of certiorari (No. 1638, O.T., 1969) was denied on June 29, 1970. Petitioner was convicted following a jury trial in the District of Connecticut under two counts of an indictment, charging the interstate transportation of and the pledging of stolen bonds, in violation of 18 U.S.C. 2314 and 2315. Petitioner was sentenced to imprisonment for five years and fined $5,000 on each count, the terms of imprisonment to run concurrently. The court of appeals affirmed this conviction (424 F. 2d 991) and denied rehearing.

The evidence is summarized in our brief in opposi-

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tion in *Coppola* (No. 1638, O.T., 1969) and in the opinion below (Pet. App. 4a–11a). Briefly, it showed that the stolen bonds were delivered in Connecticut to Testo, a financially troubled merchant, by co-defendant Coppola. Petitioner Connelly was present on at least four occasions when Testo and Coppola met and was a participant in a discussion when Testo was told that the bonds would come from a friend "down the line." Coppola introduced petitioner to Testo as his partner (Pet. 7; Pet. App. 6a).

As we pointed out in our brief in opposition in *Coppola* (No. 1638, O.T., 1969), a jury could properly find from the fact of possession of the bonds in Connecticut a short time after they had been stolen in New York that the possessor knew they had been stolen and that he either transported or aided and abetted their transportation from New York to Connecticut.

Petitioner also contends that the reversal of the conspiracy count rendered inadmissible some of the evidence admitted at trial on the substantive counts. However, it is well settled that the admissibility of such evidence rests on basic principles of agency and not on the presence of a conspiracy count. See, *e.g.*, *United States* v. *Gruzello*, 365 F. 2d 990, 995 (C.A. 2); *United States* v. *Olweiss*, 138 F. 2d 798, 799–800 (C.A. 2).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

August 1970.

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